

<b>DEVIN E. WILLIAMS, Deceased</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 216,477
<b>FLINT HILLS TRUCKING COMPANY and</b>	)	
<b>TOMCO TRUCKS</b>	)	
Respondent	)	
	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

The dependents of Devin E. Williams, deceased, appealed the July 15, 1999 Award entered by Administrative Law Judge Brad E. Avery. The Appeals Board heard oral argument on November 24, 1999.

Stanley E. Oyler of Topeka, Kansas, appeared for the dependents of the decedent. Derek R. Chappell of Ottawa, Kansas, appeared for the Workers Compensation Fund. Stanley R. Ausemus of Emporia, Kansas, the attorney of record for Flint Hills Trucking Company and Tomco Trucks, chose not to participate in the oral argument to the Appeals Board and, therefore, did not appear.

After finding that the evidence failed to prove that Mr. Williams' death was caused by any incident that arose out of and in the course of his employment with the respondent, the

Judge denied the request for benefits. Mr. Williams' dependents contend the Judge erred. They argue that Mr. Williams was a conscientious employee and that the only reasonable explanation for his disappearance was foul play. They contend that Mr. Williams' death arose out of and in the course of his employment as an over-the-road truck driver.

The only issue before the Appeals Board on this appeal is whether Mr. Williams' death was caused by either an accident or incident that arose out of and in the course of his employment.

#### **FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds:

1. Over the Memorial Day weekend in May 1995, Mr. Williams disappeared while hauling a load of produce from California to Kansas. Mr. Williams' truck was found stuck in mud in a forest meadow off a forest service road in Arizona. The cab of the truck was orderly and the load was intact. Although some of Mr. Williams' personal effects were missing from the truck, there was no evidence of foul play. Campers who saw the truck on the forest service road described a man matching Mr. Williams' description acting very strangely. We can only speculate as to the cause of the man's bizarre behavior.
2. In either April or May 1997, a portion of Mr. Williams' skull was found near the bottom of a steep cliff within a short distance from where his truck was found and where several campers placed the strange-acting man.

#### **CONCLUSIONS OF LAW**

1. The Award denying benefits should be affirmed.
2. The Judge found that the evidence failed to prove that Mr. Williams' death was compensable under the Workers Compensation Act. The Appeals Board agrees. We can only speculate as to the circumstances that brought Mr. Williams to the remote forest meadow and to the circumstances that led to his death.
3. In workers compensation proceedings, workers (and their dependents) have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which their rights depend.<sup>1</sup>
4. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.<sup>2</sup>

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<sup>1</sup> K.S.A. 44-501(a).

<sup>2</sup> K.S.A. 44-508(g).

5. Because of the lack of evidence, the Appeals Board rejects the dependents' argument that foul play must have been responsible for Mr. Williams' untimely death. The Appeals Board concludes that the evidence fails to prove that it is more probably true than not that Mr. Williams' death was caused by either an accident or incident that arose out of and in the course of his employment. Therefore, the request for benefits must be denied.

6. The Appeals Board adopts the Judge's findings and conclusions to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Appeals Board affirms the July 15, 1999 Award entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley E. Oyler, Topeka, KS  
Stanley R. Ausemus, Emporia, KS  
Derek R. Chappell, Ottawa, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director